

HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA GHOSE
AND
THE HONOURABLE SRI JUSTICE VILAS V.AFZULPURKAR

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WRIT PETITION NO.23829 OF 1997

Dt: 27-11-2012.

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Between:

DR.K.L.VYAS
AND OTHERS .. PETITIONERS

AND

THE STATE OF A.P.
REP. BY ITS CHIEF SECRETARY
SECRETARIAT BUILDINGS,
SAIFABAD,
HYDERABAD
AND OTHERS .. RESPONDENTS

HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA GHOSE
AND
THE HONOURABLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION NO.23829 OF 1997

ORDER: (Per THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA GHOSE)

This writ petition is filed in the year 1997 under the Public Interest jurisdiction by the writ petitioners praying to issue a Writ of Mandamus declaring the action of the respondents-authorities in not protecting the lakes, tanks and other water bodies in the State of Andhra Pradesh and encouraging the abandonment and conversion of tanks, lakes, kuntas and all other water bodies into Ayan for the purpose of assignment and alienation to private individuals for other purposes as illegal and arbitrary, and to restore, if any water bodies are already converted into other purposes.

Heard learned counsel appearing for the parties and perused the record.

The main grievance of the writ petitioners in this writ petition is that such conversion of lakes, tanks and other water bodies by land grabbers into assigned and alienated lands to private individuals for other purposes would create an imbalance in the ecology of the State and hence steps have to be taken by the State authorities. Certain instances have been placed in the writ petition, which are said to be classic examples of destruction of lakes, tanks and other water bodies. It is further alleged that the Government has not yet taken any steps to formulate a policy in this regard and there is every need to frame a policy for the future and permitting to destroy the greeneries, lakes, tanks and other water bodies for the purpose of construction of houses to private individuals, and that such action on the part of the Government leads

to environmental imbalance in the State. The further grievance of the writ petitioners is that the successive State Governments have also failed to take steps in the matter in question.

Curiously enough the matter is kept pending since a long time and one after the other applications were filed for impleading parties in the matter and those applications were allowed. It is needless to mention that the writ petitioners, at any point of time, also did not take any steps, which would be evident from the orders passed by the Court from time to time. In fact, in the order so passed by the court in the year 1997 i.e. on 22.9.1997, it directed the respondents not to grant any permission or consent for converting the tank bed lands and tanks and their use for any other purpose. Subsequently, it appears, that since none appeared on behalf of the writ petitioners the said order was vacated on 8.12.1998. His Lordship specifically recorded in the said order that there was no representation on behalf of the writ petitioner. It is further to be noted that the applications were filed for vacating the order passed on 22.9.1997 and those applications were disposed of by recalling the interim directions given by the Court. Further, the matter, as it appears from the records, did appear before the court from time to time. In the above backdrop, the matter was brought to our notice by the learned counsel appearing for the writ petitioners stating that the matter is pending since a long time. That is the reason, at the instance of the learned counsel appearing for the writ petitioners, this matter did appear before us on 3.9.2011, on which date, we directed the learned Advocate General to file an affidavit within two weeks duly undertaking as to what steps the State Government has taken in the matter and posted under the caption "For Orders" after two weeks for hearing.

Thereafter, learned counsel appearing for the writ petitioners has only submitted before us that it is the duty of the Government to act in accordance with the provisions of law and take necessary steps in the matter.

The Andhra Pradesh Water, Land and Trees Act, 2002 (for short 'the

Act') came into operation on 19.4.2002 to promote Water Conservation and Tree Cover and Regulate the Exploitation and use of Ground and Surface Water for Protection and Conservation of Water Sources, Land and Environment and Matters connected therewith or incidental thereto. It is pointed out by learned counsel appearing for the petitioners that under Section 3 of the Act, it is the duty of the Government to constitute an authority viz., Andhra Pradesh Water, land and Trees Authority. It is further stated that the said authority shall take all necessary steps in the matter and shall function in terms of Section 6 of the Act, which has specifically stated to promote water conservation and enhancement of tree cover in the State; regulate the exploitation of ground and surface water in the State; make regulations for the functioning of the authorities at District and Mandal level constituted under the Act; advise the Government on the legislative and administrative measures to be taken from time to time for the conservation of natural resources etc. It is further submitted that the said authority also should advise the Government on the constitution and functions of the District level and Mandal level authorities.

Learned counsel appearing for the writ petitioners also pointed out that all these measures should be taken by the said authorities and further submitted that to protect the lakes, tanks and other water bodies it is the duty of the said authority to notify them and protect in accordance with Section 23 of the Act.

Counter affidavit has been filed by the respondents in the matter long back, wherein it has been specifically stated that the intention of the Government was not to abandon any of the functioning irrigation sources. It is further stated that in many cases due to continuous failure of monsoon the tanks etc., are not getting adequate supply of waters and consequently the tanks are getting dried up and that as a matter of fact there are no traces of tanks at all in several places and that they are treated as such merely basing on the classification, as noted in the revenue records.

Recently, an additional counter affidavit has also been filed by the 5th

respondent, wherein it has been stated that the Government vide G.O.Ms.No.168, dated 7.4.2012 framed certain guidelines in respect of restricting the building construction in the vicinity of water bodies in the entire State. It is stated that a Task Force Committee has been constituted to specifically protect water bodies to take strict measures by which the encroachments in the water body breams and low lying and for rehabilitating them in safer habitable zones. It is further stated that the Government vide G.O.Rt.No.386, dated 21.3.2007 constituted a Watchdog Committee at District level to protect the water bodies and tank beds from encroachments and that the said committee is working to identify the water bodies and tank beds in the District and review the status of each water body/tank bed in the State at regular intervals. It is further stated that the Government has introduced the Double Entry Accrual Based Accounting System (DEABAS) reform in all the Municipalities/Municipal Corporations by launching the “Andhra Pradesh Municipal Accounts and Audit Reform Project (APMARP)” vide G.O.Rt.No.287, MA&UD (R) Department, dated 21.2.2011. It is further stated that in order to enhance the social control over key municipal assets such as Municipal Lands, Buildings, Lakes and Ponds etc. thereby to improve accountability and also to safeguard municipal assets, it has been resolved to publish the entire Municipal Assets Inventory of 123 Urban Local Bodies in the State in public domain. It is stated that the public were also invited to come up with any modifications after the inventory has been published by the Government so as to finalise the list or exclude any items, if left out. It is further stated that the development of tanks has also been undertaken by the Government and a list has also been stated in the said counter affidavit. It is further stated that the Government is actively monitoring all the works and taking all steps in the matter. It is further stated that frequent and constant instructions are being issued to all the authorities and also being directed from time to time in the review meetings to protect the lakes, nalas and water bodies in coordination with the Revenue Department, Irrigation Department and fixing up the full tank level etc. It is further stated that instructions are also being issued for desilting the tanks wherever

required and for formation of bund roads for proper protection of tanks and water bodies. It is stated that the State is actively monitoring all the works stated above and that as and when it comes to the notice of the authorities that any water bodies are being disturbed, stringent action is being taken against the erring persons. It is also stated that in view of the introduction of the Double Entry Accrual Based Accounting System (DEABAS), the Urban Local Bodies are responsible for safeguarding their assets, which also includes water bodies in their jurisdiction.

It is further submitted by the learned counsel appearing on behalf of the State that after examining all the issues involved in the matter in question, the Government is committed to the object of preservation of lakes, tanks and other water bodies etc., and that the Government is also discouraging the people for conversion of that land into ayan for the purpose of assignment and alienation to private individuals for other purposes.

After considering the submissions made by learned counsel for the parties, counter affidavits filed by the respondents and the material available on record, we only direct the State to take all steps in the matter, if not already taken, to constitute the committee as stated in Section 3 of the Act within a period of six weeks from date and further the State is directed to maintain all the lakes, tanks and other water bodies etc., by not allowing the same to be converted into ayan or any other purpose violating the norms of environment or ecological balance in the State. We make it clear that the Committee which would be constituted, shall monitor and file a report in the matter in question on a monthly basis.

The writ petition is disposed of on the above terms. No costs.

(PINAKI CHANDRA GHOSE, ACJ)

Dt: 27-11-2012.

(VILAS V.AFZULPURKAR, J)

TNB